[fol. 6] ORDER

Let alternative writ of mandamus issue herein as prayed for and according to law, returnable on the 28th day of May, 1935, at 10 o'clock A. M.

Thus Done, read and signed on this 20th day of May, 1935.

Cecil Morgan, District Judge.

[File endorsement omitted.]

[fol. 7] IN DISTRICT COURT OF CADDO PARISH

[Title omitted]

DEFENDANT'S PLEA OF UNCONSTITUTIONALITY OF ACT OF 1934

Now into Court in the above entitled and numbered cause, by its undersigned attorneys, comes Louisiana Oil Refining Corporation, made defendant herein, and respectfully shows:

That the Act #64 of 1934 of Louisiana, relied upon by relator in this cause, is null, void and of no force nor effect, for the following reasons, to-wit:

The said statute, if enforced in this cause, in the manner relied upon by relator, would require respondent to pay to relator the value of property which did not belong and never has belonged to plaintiff, thereby leaving respondent responsible and liable to the true owner of said property for the value thereof, and in that manner depriv-
[fol. 8] ing respondent of its property without due process of law, and denying to it the equal protection of the laws contrary to the provisions and requirements of the Constitutions of the United States and of the State of Louisiana.

Wherefore, respondent prays that this, its plea of unconstitutionality, be sustained, that the alternative writ of mandamus herein issued be annulled and set aside, that relator's demand be rejected and his petition dismissed.

For all orders and decrees necessary, for costs, and for general and equitable relief.

Blanchard, Goldstein, Walker & O'Quin, Robert Roberts, Jr., Attorneys for defendant, Louisiana Oil Refining Corporation.

I hereby certify that the foregoing plea of unconstitutionality is filed in good faith and not for delay.

Shreveport, Louisiana, June 6th, 1935.

Robert Roberts, Jr., of Counsel.

[fol. 9] IN DISTRICT COURT OF CADDO PARISH

[Title omitted]

ANSWER

Now into Court in the above entitled and numbered cause, by its undersigned attorneys, comes Louisiana Oil Refining Corporation, defendant herein, and shows the Court that the alternative writ of mandamus herein issued should be recalled and set aside, and plaintiff's demands in this cause rejected for the reasons set forth in answer to plaintiff's petition in this cause, which answer is as follows, to-wit:

1

The allegations of paragraph 1 of relator's petition are denied for lack of information upon which to base a belief.

[fol. 10] 2

In answer to the allegations of paragraph 2 of relator's petition, respondent shows that the agreement between Hyman Muslow on the one hand and A. C. Best and Sherman G. Spurr no the other is the best and only proof of the terms and conditions thereof; and except as herein specifically admitted, the allegations of said paragraph are denied.

3

The allegations of paragraph 3 of relator's petition are denied; and in this connection respondent shows that the instrument referred to in paragraph 3 is not a deed translative of the title of the lands described in plaintiff's petition for the following reasons, namely:

(a) The only consideration for the execution of said deed is the sum of One ($1.00) Dollar, which under the laws of the State of Louisiana is not a serious consideration sufficient for the execution of said deed transferring as it does lands of a value in excess of $1,000.00; and,

(b) Paul Mlodzik and Jerome Dretzka, who are alleged to have executed the said deed as President and Secretary, respectively, of Ackerman Oil Company, are not alleged, either in the deed or in relator's petition, to have been authorized by the corporation to execute the deed, and respondent alleges on information and belief that they were not so authorized.

[fol. 11] 4

The allegations of paragraph 4 of relator's petition are denied for lack of information upon which to base a belief, except that respondent admits it received from the well upon said property, between September, 1933 and August, 1934, certain crude oil, as more specifically set forth hereafter in detail.

5

The allegations of paragraph 5 of relator's petition are denied.

6

In answer to the allegations of paragraph 6 of relator's petition, respondent, engaged in the business of transporting and buying crude oil, shows that at the solicitation and special request of Hyman Muslow, plaintiff, it permitted the connection of an oil well upon the property described in relator's petition to be made with its pipe line and purchasing system, under the arrangement that upon satisfactory evidence being furnished to it of the title of the said land and the oil produced therefrom, it would pay to plaintiff Muslow the posted price of such oil in the regular course of its business; it is a universal custom of the oil industry, well known to the plaintiff, that pipe line companies, such as respondent, receiving crude oil from lease [fol. 12] operators, invariably require satisfactory assurances of the title of the lands from which such oil shall have been produced. In accordance with that custom, plaintiff Muslow furnished to defendant, acting through T. C. Patterson of its Land Department, an abstract disclosing the title of the lands in question, which abstract was submitted to and examined by defendant's attorney, Robert Roberts, Jr.; on August 24th, 1934 defendant's attorney reported to T. C. Patterson of its Land Department his opinion as to the title of the property, setting forth in

detail certain objections which should be removed in the manner indicated therein before payment of the purchase price of oil received from the land. On the same day a copy of the opinion was furnished to plaintiff's attorney, John B. Files, to whom the matter had already then been referred, with the request that the objections be removed and indicating that upon satisfactory proof of the title of the property the value of the oil would be paid to his client, the plaintiff Muslow. A copy of the opinion of defendant's attorney upon the title of the property and of his letter to plaintiff's attorney are attached to this answer and made part hereof as defendant's Exhibits 1 and 2, respectively. No effort has been made to obviate any of the objections to title mentioned in defendant's Attorney's opinion. Except as herein admitted, the allegations of paragraph 6 are denied.

7

The allegations of paragraph 7 are denied.

[fol. 13]

8

The allegations of paragraph 8 are denied; in connection with the allegations of this paragraph, respondent shows that the total amount of oil received by it from the land described in plaintiff's petition, together with the value thereof (being also respondent's posted price therefor), the severance tax paid by respondent, and the net value and price thereof are as set forth in detail upon the itemized statement attached to and made part of this answer as defendant's Exhibit 3.

9

The allegations of paragraph 9 of relator's petition are denied. In connection with the reference made to the Act No. 64 of 1934 of the Legislature of Louisiana in paragraph 9 of plaintiff's petition, defendant shows that the said Act is invalid, null and void, and in violation of the Constitutions of the State of Louisiana and of the United States, for the reasons set forth in the plea of unconstitutionality this day filed.

Further answering relator's petition, defendant shows:

10

A. C. Best and Sherman G. Spurr, from whom relator claims to have a mineral lease covering the lands from

which the oil was produced, were not the owners thereof for the reasons set forth in respondent's answer to para- [fol. 14] paragraph 3, and more fully set forth in detail in the opinion of its attorney, made part of this answer as Exhibit 1; and for the same reasons relator Muslow has never had a valid mineral lease upon said lands, and does not own and never owned the oil received by defendant, and may not recover the value thereof.

11

In the alternative, and in the event the Court should consider that the Act #64 of 1934, as amended by Act No. 24 of the First Extra Session of 1935 of Louisiana, is valid, then and in that event, as a further and additional defense to the petition for a writ of mandamus, respondent shows that the said lands, having been forfeited to the State of Louisiana for non-payment of taxes on July 31, 1915, as appears from the forfeiture recorded in the Conveyance Records of Caddo Parish, Book 102, page 400, made part hereof by reference, are the property of the State of Louisiana, and the provisions of said Act are therefore inapplicable.

12

In the further alternative, and as a further and separate defense to the petition for a writ of mandamus herein, respondent shows that on May 28th, 1935, by order signed by Honorable Ben C. Dawkins, Judge of the United States District Court for the Western District of Louisiana, in the cause entitled In the Matter of Louisiana Oil Refining [fol. 15] Corporation, Debtor, #5499 on the docket of that Court, the said United States District Court took jurisdiction of all the property, business and affairs of respondent for the purpose of a reorganization under Section 77-B of the United States Bankruptcy Act, U. S. Code, Title 11, Section 207; by said order, a certified copy of which is attached to and made part of this return, all persons, firms and corporations are enjoined and restrained from interfering with the property of respondent; and this Court may not lawfully order respondent to pay to plaintiff any sum of money. For the reasons set forth in this paragraph of respondent's answer, plaintiff may not maintain an action for mandamus, but the suit should be dismissed reserving to plaintiff the right to bring an action by ordinary process.

Wherefore, respondent prays that the alternative writ of mandamus heretofore issued in this cause be recalled, set aside and annulled, and that the relator's demand be rejected at his cost.

For all orders and decrees necessary, and for general and equitable relief.

Blanchard, Goldstein, Walker & O'Quin, Robert Roberts, Jr., Attorneys for Respondent, Louisiana Oil Refining Corporation.

[fol. 16] *Duly sworn to by Robert Roberts, Jr. Jurat omitted in printing.*

[fol. 17] IN DISTRICT COURT OF CADDO PARISH

Number 66,478

STATE ex Rel. HYMAN MUSLOW

vs.

LOUISIANA OIL REFINING CORPORATION

Statement of Evidence

Evidence on rule that alternative writ of mandamus issue, at Shreveport, Louisiana, on the 6th day of June, A. D., 1935, before the Honorable T. Fletcher Bell, Judge of the First Judicial District Court, Section "B", in and for the Parish of Caddo, State of Louisiana.

APPEARANCES

John B. Files, Counsel on behalf of plaintiff.

Robert Roberts, Jr., Counsel on behalf of Louisiana Oil Refining Corporation.

Reported by Associated Court Reporters by Mrs. John Marshall, Official Reporter.

Plaintiff's Evidence

OFFERS IN EVIDENCE

Mr. Files: Plaintiff offers in evidence deed from Ackerman Oil Company to Arthur C. Best and Sherman G. Spurr, recorded in Conveyance Book 246, Page 161, of the records

of Caddo Parish, Louisiana, leave being asked to substitute certified copy in lieu of the original.

Mr. Roberts: That is objected to. The original cannot be offered in evidence and there is no certified copy presented.

Mr. Files: I have a copy certified by the abstract company, Your Honor, but it is usual to offer the original.

Mr. Roberts: I understood that you were going to use the abstract because I have referred to a number of other instruments in the record of the title, of which I have no copies. I thought you were going to put the abstract in as to the ones I referred to and the ones that you referred to.

Mr. Files: I suggest you can use this abstract in making your offerings, otherwise I will have to get the Clerk to bring up the original. If you insist upon it I will have to go down and get the original.

Mr. Roberts: I withdraw the objection to this extent. I have no objection to the certified copies being put in [fol. 18] the record, provided they are put in before the case is argued.

Mr. Files: I offer the document.

Mr. Roberts: Objected to on the ground and for the reason that there is no showing of the authority of the persons alleged and claimed to be acting for the Ackerman Oil Company. Objected to for the further reason that the deed does not show it has been executed for any consideration which would support the contract under the laws of the State of Louisiana, and is irrelevant and immaterial.

By the Court: I do not know what is in the deed but it strikes me offhand that the objection goes to the effect of it rather than admissibility.

To which ruling of the Court counsel on behalf of defendant excepts and asks that this note stand in lieu of formal bill of exceptions.

(Whereupon the offering was received by the Clerk, marked Plaintiff-1, and filed in evidence.)

Offering

Mr. Files: I also offer in evidence the lease contract from Arthur C. Best and Sherman F. Spurr to Hyman Muslow, recorded in Book 315, Page 74, records of Caddo Parish, Louisiana, leave being asked to substitute certified in lieu of the original.

Mr. Roberts: That is objected to for the reason it is immaterial and irrelevant since it is neither alleged nor proved that Sherman G. Spurr and Arthur C. Best, nor the Ackerman Oil Company, ever had any title to the land involved in this suit.

By the Court: Well that goes right back to the other.

To which ruling of the Court counsel on behalf of defendant excepts and asks that this note stand in lieu of formal bill of exceptions.

(Whereupon the offering was received by the Clerk, marked Plaintiff-2, and filed in evidence.)

Hyman Muslow called to the stand by counsel as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct examination.

Mr. Files:

Q. Mr. Muslow you are the Hyman Muslow mentioned [fol. 19] in the lease contract of A. C. Best and Sherman G. Spurr, dated April 18th, 1933?

A. Yes, sir.

Q. After you acquired that contract did you go upon the property?

A. Yes, sir.

Q. Did you develop it for oil or gas?

A. Yes, sir.

Q. Did it produce oil or gas?

A. Yes, sir.

Q. What did you do with the oil or gas after you produced it?

A. I sold it to the Louisiana Oil Refining Corporation. They took the oil from me and they sent me a letter to that effect, that if I laid my own line to the main line of theirs, which was about a mile and a half line, they would take it.

Mr. Roberts: How far did you say?

By the Witness: Close to a mile and a half. That if I would lay that line they were willing to take the oil, and I done so. Then they made the connection and took it over.

Mr. Files:

Q. In other words you built a line?
A. Yes, sir.
Q. From this property?
A. From this property up to the main line.
Q. To the main line of the Louisiana Oil Refining Corporation, a mile and a half from the property?
A. Yes.
Q. Did you sell that oil?
A. Yes, sir.
Q. Did they take it?
A. Yes.
Q. Did they render you a statement of it?
A. Yes, I got my tickets.
Q. Did they pay you for it?
A. No, sir.
Q. Did you demand payment for it?
A. Yes, sir.
Q. How many times?
[fol. 20] A. Four or five times.
Q. How long has it been due?
A. Been due about a couple of years,—hasn't it?
Q. A couple of years. Since that time they have made no effort at all to pay for this Oil?
A. No, sir.
Q. They bought it from you?
A. Yes, sir.
Q. That is all.

Cross-examination.

Mr. Roberts:

Q. To whom did you talk that worked for the Louisiana Oil Refining corporation?
A. I went in the main office, in that pipeline department.
Q. Mr. Gano?
A. I think so.
Q. How long have you been in the oil business?
A. Oh, approximately about ten or fifteen years, something like that.
Q. Where, Mr. Muslow?
A. At Oil City.
Q. At Oil City?

A. Yes.
Q. Here in the Caddo Oil Field?
A. Yes, sir.
Q. You know the manner and the way in which pipeline companies do business?

Mr. Files: That is objected to as being irrelevant and immaterial to any issue involved in this case. The question here is simply whether the oil was delivered to them or they bought it. He is the last record owner according to that statute.

By the Court: It may have some bearing upon the testimony he has given. Objection overruled.

To which ruling of the Court counsel on behalf of plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions.

[fol. 21] Mr. Roberts:

Q. You know the way the pipeline companies do business, do you not, Mr. Muslow?
A. Well that is the experience what I had, at any time they tell them to connect to my line they always pay me.
Q. They always look into the title, do they not?
A. Sir?
Q. They always examine title to land?
A. Well they didn't ask me about the title because I know that Mr. Best and some folks used to run oil down there and they paid them for it.
Q. My question is that you know the way pipeline companies always satisfy themselves as to title to land?

Mr. Files: That is objected to unless it is shown that Mr. Muslow was attorney for the Louisiana Oil Refining Corporation at some time and passed upon that title.

By the Court: What is that?
Mr. Files: He would have had to have been an attorney for the corporation at some time to know what they do.

Mr. Roberts:

Q. Where did you get your abstract?
A. I wrote them to send it to me.
Q. You turned over your abstract to the Louisiana Oil Refining Corporation, did you not?

A. I took it over to Mr. Files, and I came back and found that somebody had a mortgage upon it. That was the reason I got the abstract, I was getting ready to clean up.

Q. When did you turn the abstract over to your attorney, Mr. Files?

A. Well I turned over that abstract when Bill Ramsey had a claim against them and that is the reason I got the abstract, to clean that thing up.

Q. Did you authorize Mr. Files to handle the matter with the Louisiana?

A. Yes.

Q. You knew that he turned the abstract over to the Louisiana Oil Refining Corporation?

[fol. 22] A. I could not tell you that.

Q. You were not present?

A. Well I could not tell you. I took it to Mr. John Files and he attended to it.

Q. You say you had a conversation with Mr. Gano. You just asked him if he could connect your wells and take the oil, did you not?

A. I didn't talk to him about that. I say I was talking to that man in Oil City and a fellow Weldon had a letter that if I would run my line to their main line they would take the oil, and I done it.

Q. You did not talk to anybody except Mr. Weldon?

A. And they told me if I would lay that line down there they would take the oil.

Q. When you first talked to him he told you he would have to get whatever authorization he needed from the main office?

A. What?

Q. He told you he would have to get permission from the main office to connect?

A. Well they did that all the time for small production, anyone that laid their own lines. He said if I would lay my own line they would take the oil.

Q. You do not know what the main office told Mr. Weldon?

A. That is the letter they sent to that effect, that if I laid that line they will take the oil.

Redirect examination.

Mr. Files:

Q. I believe you have stated you made repeated demand for payment of this and it has not been paid?

A. Sir?

Q. I believe you have testified that you made repeated demands upon the Louisiana Oil Refining Corporation to make payment and they have failed to pay?

A. Yes, sir.

Q. Never paid you any part of it?

A. No, sir.

[fol. 23] Q. Here is a statement of the oil runs annexed to the answer of the defendant. Is that about correct?

(Witness examining statement.)

A. Let's see how many runs they got there. I wouldn't swear to that because I don't remember.

Q. This shows just six runs. The last run was in August. Has any been run since August?

A. No, I don't think so.

Offering

Mr. Files: We offer in evidence the statement as to the amount of oil, being attached to the defendant's answer.

(Whereupon the offering was received by the Clerk, marked Plaintiff-3, and filed in evidence.)

Plaintiff rests.

Defendant's Evidence

Offering

Mr. Roberts: Defendant offers in evidence tax forfeiture for the State of Louisiana, dated July 13th, 1915, recorded in conveyance records of Caddo Parish, Louisiana, Book 102, Page 400. This offering is made by reference and we will furnish a certified copy thereof before the case is submitted for argument.

Mr. Files: That is objected to as irrelevant and immaterial to any issue involved in this case for the reason that this is a proceeding under the provisions of Act 64 of 1934, which precludes and prevents the investigation of any title back of the record of last record owner. I object to it upon the further ground that defendant having purchased the oil from the plaintiff is estopped to question his title to the oil.

By the Court: Objection overruled.

To which ruling of the Court counsel on behalf of plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions.

(Whereupon the offering was received by the Clerk, marked Defendant-A, and filed in evidence.)

[fol. 24] Offering

Mr. Roberts: Defendant offers in evidence deed from Frederick S. Oliver by T. R. Hughes, Tax Collector, to Fred L. Lake, dated July 14th, 1919, recorded in the records of Caddo Parish, Louisiana, Conveyance Book 123, Page 256, with leave to substitute certified copy in lieu of the original prior to the submission of the case to the Court.

Mr. Files: That is objected to for the same reasons as previously urged. There is no question of estate involved in that, if the Court please.

By the Court: Objection sustained.

To which ruling of the Court counsel on behalf of defendant excepts and asks that this note stand in lieu of formal bill of exceptions.

T. C. Patterson called to the stand by counsel as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct examination.

Mr. Roberts:

Q. You are Mr. T. C. Patterson?
A. Yes.
Q. Employed by the Arkansas Natural Gas Corporation, Mr. Patterson?
A. Yes.
Q. And the Louisiana Oil Refining Corporation?
A. Yes.
Q. In what capacity?
A. Have charge of the records of both companies.
Q. For how long have you been employed in that manner?
A. Fifteen years.
Q. That is, for the Arkansas Natural Gas Corporation?
A. For the Arkansas and for the Louisiana since consolidation.

Q. How long have you been in the oil and gas business?
A. Twenty-five years.
Q. How long have you been in the land department in that business?
A. During that period.
Q. During that period. Do you know the custom of the oil business with reference to the manner of paying the purchase price of oil or gas to lease operators?

[fol. 25] Mr. Files: If the Court please we will object to proving what other oil companies do or what this company does in other instances, other than the instance before the Court.

Mr. Roberts: This is with reference to the so-called estoppel.

Mr. Files: You cannot prove the same by custom.

By the Court: Objection overruled.

To which ruling of the Court counsel on behalf of plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions.

Mr. Roberts:

Q. Do you know it? Just answer yes or no.
A. Please state the question.

(Question read to witness.)

A. Yes.

Mr. Files: We object to the way that question is framed, Your Honor. He says of the oil business. He can tell what the Louisiana did.

By the Court: Well I think generally in this locality. It is as to the general custom that would be binding upon Mr. Muslow, not what some particular individual would do.

Mr. Files: We make the same objection as made before and ask that the objection and ruling of the Court be made general to apply to all evidence of this character.

By the Court: Let the objection and ruling be made general to all testimony of similar nature.

Mr. Roberts:

Q. Did you answer?
A. I said, yes.
Q. Will you state what that custom is?

A. Before payments are made for the oil purchased it is the rule to ask that some proof be submitted and that it issue in the form of an abstract that might be examined in order to establish title to that oil.

Q. In other words pipeline companies obtain some assurance as to the title of the land from which the oil is purchased?

A. Yes.

Q. Is that custom universal or not?

A. I would say that it is, yes, sir.

[fol. 26] Q. Have you ever had any conversation with Mr. Muslow with regard to this particular oil that is involved in this law suit?

A. Yes.

Q. About when were those conversations?

A. Soon after the runs were made Mr. Muslow came in to see me and I asked if he had an abstract. He said, no, that he did not. I said, "Do you know where you can get one"? He said, "No, maybe Mr. Best has one", and he suggested that I write to Mr. Best and ask for the abstract. I said, "Why"? He said, "The value of the oil is not going to be much and of course I don't want to put much money into an abstract". I said, "Mr. Muslow it is not up to the company to furnish an abstract and whenever you are ready to submit the abstract, after we have examined it and found that your title is established to the oil, we will pay you and execute a division order". Mr. Muslow came back two or three days afterward and the same conversation took place.

Q. Did he ever furnish an abstract?

A. No, sir.

Q. Not to you?

A. No, sir.

Q. You know that one was furnished?

Mr. Files: He says he doesn't. How can he tell. You may be sworn.

Mr. Roberts:

Q. Did you ever get an opinion on the title from the company's attorney?

A. Yes.

Q. That is, from me?

A. Yes.

Q. When was that? Have you it with you?

A. I believe I have, Yes, I have it. (Producing document.)

Q. When did you receive that?

A. August 24th, 1934.

Q. The paper you have just referred to I will mark Defendant Exhibit-1. Has any document ever been furnished to you which would remove the objections which are mentioned in the attorney's opinion?

Mr. Files: That is objected to as trying to get in indirectly what he has in his written opinion, if the Court please, and we object to it.

[fol. 27] (Question read to the Court.)

Mr. Files: That is objected to. Any company letter from the attorney to one of the officers would not be evidence affecting the title to this piece of property.

By the Court: I do not know what is in the letter.

Mr. Roberts: Your Honor I said that the letter mentioned certain objections to the title and I ask if they have ever been removed by anything which has been furnished to him.

By the Court: I do not know what those objections are and whether they have anything to do with this case.

Mr. Files: And the letter is not in evidence and cannot be filed in evidence.

By the Court: Therefore all I can do is to sustain the objection for the present until I find out what you are driving at.

Mr. Roberts: I am merely asking whether or not the objections which are mentioned have ever been removed.

By the Court: I do not know whether your objections that you have to the title have anything to do with this case. There is none of that in evidence up to the present time, and I cannot positively say whether those documents that were never submitted have anything to do with the case.

Mr. Roberts:

Q. Mr. Patterson in the business of the Louisiana Oil Refining Corporation do you have any duty and connection with payment of oil received?

A. Yes, sir.

Q. What is that duty?

A. Well when the title has been accepted, that is, the objections made and they have been obviated and the title found to be satisfactory, then we authorize payment for the oil purchased.

Q. You are the man that authorizes the accounting and treasury department to make payments?

A. Yes, sir.

Q. Have you ever given that authorization in the case of the oil runs involved in this case?

A. No, sir.

Q. Why.

A. Because there has not been any proof submitted that the title is satisfactory.

[fol. 28] Q. I believe that is all.

Cross-examination.

Mr. Files:

Q. Did you require an abstract of this before you bought the oil, Mr. Patterson?

A. No, sir.

Q. You just bought it without any title or anything else, didn't you?

A. The oil was run.

Q. The oil was run by your company?

A. Yes.

Q. From Mr. Muslow?

A. Yes.

Q. A certain number of barrels and for a certain price?

A. For the posted price.

Q. For the posted price?

A. Yes.

Q. He has demanded payment and you have refused?

A. Well under the custom prevailing——

Q. (Interrupting witness:) Well whether custom or what it is you refused to pay it?

A. Well we haven't paid it.

Q. You haven't paid it and he demanded it?

A. Well I don't know whether he demanded it or not. He has never made a demand to me for payment for the oil. You mean when he came to me and told me——

Q. (Interrupting.) You mean he has never demanded payment for the oil?

A. No, sir, he has not demanded payment.

Q. He demanded that you pay it?
A. No, sir.
Q. Did you tell him that?
A. That we asked that an abstract be submitted.
Q. Did you make a deal with Mr. Muslow for the oil?
A. No.
Q. That is not in your department?
Q. That is handled by the pipe line department.
Q. You know nothing about that?
A. No, sir.
[fol. 29] Q. You are in the accounting department?
A. No, I am in the land department.
Q. In the land department?
A. Yes.
Q. And you do not buy the oil or run the oil, do you?
A. No, sir.
Q. That is not in your department?
A. No, sir.
Q. And you know nothing about that?
A. Yes, a little something about the oil business.
Q. You know what somebody else tells you?
A. Oh, no. I know when the oil is run.
Q. Did you run this oil?
A. No.
Q. Who told you about it?
A. That would be in the pipeline department.
Q. And the pipeline department told you, didn't it?
A. I had notice from them when the ticket was received.
Q. Oh, yes.
A. That the oil had been run.
Q. Well you have no direct information of your own, have you?
A. I am not working in the field.
Q. That is what I understand.
A. Yes.
Q. You are sitting in an office in the Ardis Building or you were at the time?
A. Yes.
Q. You were not out in the field?
A. Not working in the field.
Q. The oil is produced in the field?
A. Yes.
Q. It is run to the pipe line in the field?
A. Yes.

Q. The pipe line man ran this oil?
A. Yes.
Q. You know nothing about that?
A. That is true until——
Q. (Interrupting.) Until a record is brought to your office from the pipeline department?
[fol. 30] A. That is correct.
Q. And that is the only information you have, isn't it?
A. Yes, sir.
Q. The usual procedure when you run oil is to give a division order, isn't it?
A. That is correct.
Q. You did not give any in this case?
A. I did not see how it was possible to give one.
Q. Did you return the oil to Mr. Muslow?
A. Well, no.
Q. You used the oil?
A. The oil was used.
Q. By your company?
A. Yes.
Q. You have not offered to either return the oil or to pay for it.
A. I don't believe he has demanded the return of the oil.
Q. Would you return it?
A. I imagine he could have it back.
Q. He could have it back?
A. I think so.
Q. Would you want to enter into a stipulation in this case?
A. No, I would not want to but I imagine he could have it back.
Q. If you will enter a stipulation that this oil will be delivered to Mr. Muslow I think that would be satisfactory.
A. Well I would have to take that up.
Q. You are not in position to do that?
A. Not right now.
Q. In other words you have used his oil and have not paid for it, that is the situation, isn't it?
A. The company has run the oil for his credit.
Q. I say your company has used the oil and has not paid for it?
A. There is a credit for the amount of oil that has been run.

Mr. Files: Will you read the question, Mrs. Marshall.

(Question read to witness.)

Q. Can you answer that question?

A. I cannot say whether they have used that particular oil or not but I assume that it was intermingled with the other oil and has been used.

[fol. 31] Q. If they have not used it what did they do with it?

A. Well they could store it.

Q. In their possession?

A. They have tanks to store oil in.

Q. Tanks? That was in August, 1934?

A. Well I don't know just when the oil was run. I haven't the date when that oil was run.

Q. As a matter of fact you do not know anything about that feature of it, do you, Mr. Patterson?

A. I believe I have answered that, that it is purely a pipe-line matter, the running of the oil.

Q. You are not in charge of the pipe line?

A. No, sir, but I do have something to do with the payment of the oil.

Q. Oh, yes: And you pay when somebody tells you it is okeah?

A. Not always.

Q. You sometimes pay it without any instructions?

A. Well when we have satisfied ourselves—just the same as you——

Q. (Interrupting.) In other words it has to be satisfactory to you?

A. Yes.

Q. Yes? Not only the payment but the title and everything else?

A. Yes, sir.

Q. And if it isn't satisfactory to you you keep the oil and don't pay for it?

A. Well we don't keep it. It is unpaid but to the credit of the seller until the time that it is satisfactory.

(Witness excused.)

Robert Roberts, Jr., being first duly sworn as a witness on behalf of defendant, testified as follows:

I am Attorney for the Louisiana Oil Refining Corporation, defendant in this case, and have been so employed for approximately a year and a half.

Shortly before August 24th, 1934, Mr. John B. Files, an attorney practicing in Shreveport, came to my office and delivered to me an abstract which he stated covered the title to certain land in the northern part of Caddo Parish, from which the Louisiana Oil Refining Corporation was taking oil. Mr. Files said that he represented Mr. [fol. 32] Hyman Muslow, who was producing this oil under lease, and asked that I examine the title to the property so that payment might be made for the oil.

I consulted Mr. T. C. Patterson, employed in the land department of the company, and ascertained that the company was receiving oil from the tract of land. I thereupon or shortly afterward examined the title and upon August 24th, 1934, reported to Mr. Patterson in writing upon the title of the property by means of an opinion, which has already been identified as Defendant's Exhibit-1.

Offering

Mr. Roberts: This opinion is now offered and introduced in evidence as Defendant-1.

Mr. Files: That is objected to, if the Court please, as the attorney cannot introduce his opinion upon the title. That has nothing to do with the title, as to what opinion he may have rendered his client in the matter.

Mr. Roberts: The plaintiff in this case has raised the question of whether or not we have bought this oil unconditionally and I believe we are entitled to show the circumstances.

By the Court: I do not see where specific objections that are in an attorney's opinion are admissible in this case. Objection sustained.

Mr. Roberts: I would like to reserve a formal bill of exceptions to the Court's ruling.

Mr. Roberts (continuing statement): On the same day the abstract was returned to Mr. Files and he was furnished with a copy of the opinion.

Mr. Files: Same objection to all this kind of testimony, if the Court please, as being irrelevant and immaterial and having no bearing upon the issues involved in this case.

By the Court: I cannot see what that has to do with it.

Mr. Roberts: I do not want to take advantage of the fact that I am not being questioned but I do want the testimony to form a part of a formal bill.

By the Court: And I want to see that you get the matter down in proper shape and any way that you can agree upon that is perfectly agreeable to me.

Mr. Files: I have no objection to the form of the proceeding, except as to the substance of the testimony. It is irrelevant and immaterial.

By the Court: I know of no way, even if you were being questioned, by which you can get that down in the record.

Mr. Roberts: I can ask questions and let the objections be sustained.

[fol. 33] Q. Did you or did you not at that time furnish a copy of the opinion, to which you have just referred, to the plaintiff's attorney, Mr. John B. Files?

Mr. Files: That is objected to, if the Court please, for the reasons previously stated. I make the same objection.

By the Court: Objection sustained.

To which ruling of the Court counsel on behalf of defendant excepts and asks that this note stand in lieu of formal bill of exceptions.

Mr. Roberts:

Q. Did you ever discuss the matter again with the plaintiff's attorney, Mr. Files?

Mr. Files: Same objection.

By the Court: Mr. Roberts I do not know whether to sustain that or not. It may depend somewhat upon what happened afterward. I just want to know what you are driving at. I will overrule that. To which ruling of the Court counsel on behalf of plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions.

Mr. Roberts: Yes.

Q. When was that?

Mr. Files: Same objection.

Mr. Roberts: According to my recollection it was sometime during April, 1935.

Q. What was said at that conference?

Mr. Files: That is objected to as being irrelevant and immaterial to any issue involved in this case, being simply a discussion.

By the Court: Objection sustained. If it was something that really had bearing upon the original purchase of the oil it might possibly be admissible.

Mr. Roberts: I ask that the Clerk mark this letter D-1 for identification upon this date, in suit Number 66,478, for the purpose of attaching to a special bill of exceptions.

[fol. 34] Offering

Mr. Roberts: Respondent offers and introduces in evidence Defendant's Exhibit-2, being copy certified by the Deputy of the United States District Court of the oil run on May 28th, 1935, cause Number 5499 of the bankruptcy docket, in the name of the Louisiana Oil Refining Corporation, debtor.

(Whereupon the offering was received by the Clerk and filed in evidence as Defendant-2.)

Defendant closes.

Plaintiff in Rebuttal

Hyman Muslow recalled to the stand by counsel as a witness on behalf of plaintiff in rebuttal, having been previously sworn, testified as follows:

Direct examination.

Mr. Files:

Q. You have already been sworn, Mr. Muslow. You heard Mr. Patterson's testimony about the demand made for payment of this oil?

A. Yes.

Q. Did you make demand upon him for payment of this oil?

A. I didn't make demand exactly on Mr. Patterson but I made demand in the office that I wanted my money or oil back.

Q. You told him you either wanted your money or oil?

A. Yes.

Q. What did he say?

A. Well he didn't answer.

Q. Did you make that demand more than once?

A. Yes. I even told Mr. Patterson it looked like he would give me my oil back or money back.

Q. You have not gotten either?
A. I have not.
A. That is all.

(Witness excused.)

Evidence closed.

[fol. 35] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 36] In First District Court, Parish of Caddo, State of Louisiana

No. 66,478

State ex Rel. Hyman Muslow

vs.

Louisiana Oil Refining Corporation

Opinion

This is a mandamus suit brought under the provisions of Act 64 of 1934. Without reciting here the allegations and the evidence, we take up the different defenses.

It is contended that the act of transfer from the Ackerman Oil Company to Best and Spurr is not translative of property for the reason that same recites a consideration of One Dollar and other good and valuable considerations; and that the act is signed by two parties who style themselves as President and Secretary without showing that they acted by virtue of a resolution of the Board of Directors.

In as much as a corporation is not supposed to give its property away, and as One Dollar is not a serious consideration, if the One Dollar was all that was mentioned, the same might be considered as a donation and therefore voidable. [fol. 37] But the act says "other good and valuable considerations", which would leave that part open to proof, ordinarily, as to what they were.

An act translative of property is one that could be the basis for a ten year prescription. Where the deed is defective for the want of the evidence of what the consideration is, it is one translative of property. This is the gist of the

decisions which we shall cite on the other feature of this question.

It is contended that the President and Secretary merely by virtue of their office have no power to sell the property of the corporation, and with this we agree. To make the sale absolutely good as against the corporation it would take a resolution of the Board of Directors.

It is contended that the Ackerman sale cannot be compared with those deeds which, executed by a claimed agent, has been held translative of title even though power of attorney be not annexed to the deed. Under these authorities, if it be necessary for the deed itself to state that the agent was acting by virtue of a written power of attorney, then the contention of counsel is correct. It is true that in most of the cases in which this question has been involved, that was the fact, but we do not think that such was the underlying reason for the jurisprudence. In fact, in the latest case, that of Bowers vs. Langston, 156 La. 195, in which all the authorities are cited, there was no such recital in the deed. We think the true principle is that where the defect consists in [fol. 38] the want of evidence of the mandate such will not prevent the deed from being translative of property. We think the deed in question was one translative of property.

Defendant attacks the constitutionality of Act 64 of 1934 on the ground that same is violative of the due process clause and denies the equal protection of law; in that it would require respondent to pay relator the value of the property which might belong to some one else, thereby leaving respondent liable likewise to the true owner.

Oil before being reduced to possession belongs to no one; after being reduced to possession it loses its character of realty and becomes merely personal property, belonging either to the owner of the soil or the one who reduces it to possession. Granting that the true owner of the soil has a right of action against the purchaser of the oil from one who reduced it to possession but who was not the true owner for the value of the oil so purchased, then unless such purchaser can be protected under the terms of the Act, we think the Act is unconstitutional; but if the Act can protect such purchaser, then it is constitutional.

Counsel for defendant cites the jurisprudence of the various states which have passed on the constitutionality of the Torrens Land Laws. The gist of such jurisprudence is to the effect that if such laws provide for service of process,

[fol. 39] either personal or substituted, against all known or unknown claimants, and a hearing after such service, the law is good; otherwise not.

The main distinction between the Torrens laws and the present law is that the former deals with the title and ownership of real estate and cuts out, perhaps, the true owner from ever claiming anything from anybody, while the present law deals only with personal property and the possession of the proceeds thereof.

The nearest thing we can find to the present situation is that provided by Act 112 of 1894, as amended by Act 140 of 1918 and Act 64 of 1921, extra session. Under the terms of that Act if heirs of a deceased are placed in possession of the funds of the ancestor by judgment of Court, then any Bank who pays out those funds to such heir will be protected even against the true heirs. So far as we can find, the constitutionality of such acts has never been passed upon. In a case in 179 La. 333, the Supreme Court refused to pass upon such, as it was not raised in the lower court. Judge Odom, in the case of Dixon vs. Commercial National Bank, 13 La. App. 204, has given the best exposition of the law that we have been able to find, although he did not discuss the constitutional question. We quote from that case:

"Counsel for appellant cites a long list of decisions holding, in substance, that an ex parte order of court, recognizing and putting heirs in possession of the estate of deceased [fol. 40] persons, lacks the elements and essentials of the thing adjudged, and cannot be pleaded as res adjudicata. But those cases have no application here. The question here involved is not whether Mayfield owned the funds in the bank, but whether she was given the right to take possession of them under the order of court. Most assuredly, that ex parte order of court was not binding upon these plaintiffs in so far as their rights of ownership by inheritance were concerned. The judgment did not pretend to recognize Mayfield as the owner of the property of deceased as against those who might later appear and establish their rights of inheritance. The only effect of the judgment was to place Mayfield in possession of the estate. The judgment sent her into possession of certain real estate which belonged to deceased. Under the judgment, she had a right to take immediate possession of the reality; but possession is one thing and ownership is quite another.

"It is settled jurisprudence that an ex parte judgment recognizing one as heir of a deceased person and sending him into possession of the estate is prima facie evidence of ownership which entitles the party so recognized to full and exclusive possession until such time as other may appear and assert and prove ownership in themselves. In the case at bar, the ex parte judgment was prima facie evidence of Mayfield's ownership of the funds in the bank and gave her the right to take and hold possession of them as against these plaintiffs until such time as their rights of inheritance had been recognized by a court of competent jurisdiction. Plaintiffs in a later proceeding, contradictorily with Mayfield, were finally decreed to be the legal heirs of deceased [fol. 41] and entitled to all his property. The effect of that decree was to oust Mayfield of her possession, but, up to the date of the decree, Mayfield was lawfully in possession.

"In the case of Glover et als., vs. Doty, 1 Rob. 130, plaintiffs, who had been recognized as heirs of Ruth Robie, sued defendant to collect a promissory note due deceased. Defendants set up as a defense that plaintiffs were not the heirs and legal representatives of the deceased, but the court said:

'We are of the opinion that the recognition of the plaintiffs as heirs, by the court of probates, furnishes at least prima facie evidence of their being so, and would have justified a payment made to them by the defendant. It is to that court that absent heirs, to whom estates have fallen in this state, which have been administered by curators, are to address themselves in order to call such curators to an account; and although such recognition would not preclude other heirs who should afterwards appear, nor even a debtor of the estate from showing that other persons are in fact heirs, yet, until such other person is named, and evidence offered to show his heirship in preference to those who may have been admitted by the court of probates, which has not been done in this case, such evidence of heirship must be held sufficient.'

"The above from the Doty case was quoted by the court in the late case of Taylor vs. Williams, et al., 162 La. 92, 110 So. 100, 101, and many other cases of similar import were cited. In the Taylor-Williams case, the court said:

'Although an ex parte judgment sending an heir into possession of an estate, rendered by a court of competent juris-

[fol. 42] diction, of course, is not a basis for a plea of res judicata, or conclusive against any one having an adverse interest in or claim against the estate, such a judgment is prima facie evidence of the right of the heir in whose favor it was rendered to take possession of the estate.'

"It is therefore clear that, if Act No. 112 of 1894 had never been enacted, Mayfield could have compelled the bank to transfer the deposit to her account and certainly such transfer would have protected it. By enacting this statute above referred to, the Legislature recognized a rule which had always existed."

Thus in case of a succession a judgment makes out only a prima facie case of heirship, and entitled the heirs to the possession of the property of the succession until this prima facie case is overthrown. Act 64 of 1934 makes out a prima facie case of ownership of oil produced under the circumstances set forth herein, and entitles such prima facie owner to receive pay for same. The act of 1894 has been in existence for forty-one long years and has never been attacked. We realize that does not make it constitutional, but we can hardly conceive of it lasting so long without attack if it were unconstitutional.

In the absence of anything showing that he Act is plainly unconstitutional, we are constrained to hold the contrary under the well established rule that it is presumed to be so. [fol. 43] The further defense is made that the provisions of the Act do not apply to this case by reason of the terms of Act 24 of the First Extra Session of 1935, providing that Act 64 of 1934 does not apply to minerals produced from lands owned by the State of Louisiana, and that the evidence in this case shows that the land involved herein was forfeited to the State of Louisiana for unpaid taxes. The act of forfeiture filed in evidence shows that in July, 1915, there was adjudicated to the State of Louisiana for the unpaid taxes of 1914, assessed to C. A. Wright an "undivided interest in 50 acres in south half of south half of Section 35 T. 21 R 16". The land from which the oil was produced is an irregular tract of 37 acres in South half of south half. The south half of south half contains 160 acres, and we have no means of telling from the evidence here whether the vague, uncertain description contained in the adjudication has any reference or any connec-

tion whatever with the tract involved here. Under such circumstances it can have no bearing on the present case.

Before passing from the tax sale phase of the case, it may be well to mention that we find in the record, filed in evidence, a tax sale to Fred L. Lake. According to the note of evidence this should not be in the record as an objection to its admissibility was sustained.

The last defense made is that the respondent, Louisiana Oil Refining Corporation took advantage of the famous 77-B of the Bankruptcy Act, and that on May 28th, 1935, [fol. 44] (which was a few days after this suit was filed) Judge Dawkins of the United States District Court took jurisdiction of all the property of respondent, and issued an order under the terms of which this court is divested of any right or jurisdiction to issue a mandamus order for the payment of money. That under the terms of the law and under the terms of the order, all plaintiff could do would be to get a money judgment by ordinary process, which could be paid only in regular course.

If the order issued by Judge Dawkins of the Federal Court must be obeyed by this Court, then this Court cannot grant to relator the full measure of relief asked.

On this part of the case counsel for relator says:

"We do not deem it necessary to refer to the argument on the suit now pending in the United States District Court. It can have no binding force on the issues involved in this suit, which was instituted prior to the proceedings in the Federal Court and this Court having acquired jurisdiction first, cannot be ousted of its jurisdictional authority."

We wish that we could decide the question as easily as counsel has to his own satisfaction.

Subsection "o" of 77B provides that the jurisdiction and powers of the Court, and the rights and liabilities of creditors shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was approved.

[fol. 45] If this were an ordinary bankruptcy matter neither the filing of the petition nor the adjudication could divest the jurisdiction of this Court; it would entitle the petitioner to a stay of proceedings until the Federal Court has passed on the question of discharge, but if no such ap-

plication for a stay was filed, the Court could proceed to render judgment. Leaving out of consideration the questions of the enforcement of liens in the state courts which liens are recognized in the bankruptcy laws, the state court cannot enforce the execution of its money judgment against property which has been surrendered in bankruptcy.

Subsection "a" of 77B provides that the court where the proceedings are filed shall have exclusive jurisdiction of the property of the debtor, and shall have and exercise all the powers which a Federal Court would have had it appointed a receiver in equity of the property of the debtor.

No money judgment against a corporation in receivership, whether in the state court or the federal court, can be executed except in ordinary course of payment.

A judgment ordering the payment of money by way of a mandamus is nothing more than an execution of a money judgment, and we do not think such a judgment can be rendered against this defendant.

Under Act 64 of 1934, we do not think it obligatory that a party seeking payment for oil must proceed only by way [fol. 46] of mandamus. He can take advantage of the provisions of the act by an ordinary proceeding, and if the prayer in this case will permit of an ordinary money judgment being rendered, then we think we can do so in this case.

The prayer follows:

"Wherefore, premises and annexed affidavit considered, relator prays that alternative writ of mandamus issue herein, directed to the Louisiana Oil Refining Corporation, a foreign corporation authorized to do business in the State of Louisiana, and domiciled in the City of Shreveport, commanding it to pay to your petitioner the sum of Nine Hundred Fifty ($950.00) Dollars with legal interest from July 12th, 1934, until paid, or to show cause to the contrary on such a day and at such an hour as the court may direct.

"Relator further prays that there be judgment in favor — your petitioner and against the defendant in the sum of One Hundred Fifty ($150.00) Dollars for attorney's fees and willful neglect and disregard of the statutory duty of the defendant to pay your respondent for the oil so produced, sold and delivered to it.

"Relator further prays for all costs, general and equitable relief."

The right to the writ of mandamus ordering the payment of money is necessarily based on a finding that the money is due; therefore a prayer for the writ ordering the payment necessarily includes, by implication at least, a prayer for a finding that it is due. We think under such [fol. 47] a prayer, especially when it includes that, for general and equitable relief, this court can render judgment in favor of plaintiff fixing the amount due, and ordering its payment in due course.

As to the date when legal interest becomes due counsel has evidently taken his date from the date when the Act was approved by the Governor. The Act provides that, as to past due accounts, they are not due and payable for a period of sixty days from the effective date of the Act. The Act became effective on August 1st, 1934; sixty days after that is September 30th, 1934, and interest should run from that date.

We know of no authority under which attorneys fees could be allowed.

For the foregoing reasons, there should be judgment recalling the alternative writ of mandamus; further judgment in favor of relator in the sum of Four Hundred Forty-five and 55/100 Dollars, with legal interest from September 30th, 1934, until paid, the same to be paid in due course of administration; and rejecting the demand for attorneys fees.

T. F. Bell, District Judge.

[fol. 48] IN DISTRICT COURT OF CADDO PARISH

ORDER SUBSTITUTING PARTY DEFENDANT, ETC.—January 18, 1937

Motion filed Jan. 16, 1937, submitted and sustained, and Arkansas Fuel Oil Co., substituted as sole Defendant. Louisiana Oil Refining Corp., dismissed as defendant and stay of proceedings heretofore ordered set aside. (Judge Bell.)

[fol. 49] IN FIRST DISTRICT COURT, CADDO PARISH, LOUISIANA

No. 66,478

STATE ex Rel. HYMAN MUSLOW

vs.

LOUISIANA OIL REFINING CORPORATION

JUDGMENT

In this cause, the law and evidence being in favor thereof and for the reasons assigned in the written opinion herein filed;

It is Ordered, Adjudged and Decreed, that the plaintiff, Hyman Muslow, do have and recover judgment against the Arkansas Fuel Oil Company, substituted defendant for the Louisiana Oil Refining Corporation, in the full sum of Four Hundred Forty-five and 55/100 ($445.55) Dollars, with legal interest from September 30, 1934, until paid.

It is further ordered, adjudged and decreed that the defendant pay all costs of this suit.

Thus Done, read and signed in open court on this the 27 day of January, 1937.

T. F. Bell, District Judge.

[fol. 50] IN COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA

No. 5467

STATE ex Rel. HYMAN MUSLOW, Plaintiff-Appellee,

vs.

LOUISIANA OIL REFINING CORPORATION-ARKANSAS FUEL OIL COMPANY (Substituted Defendants), Defendant-Appellant

Appeal from the First Judicial District Court in and for the Parish of Caddo; Hon. T. F. Bell, Judge

John B. Files, Attorney for Appellee.

Blanchard, Goldstein, Walker & O'Quin, Robert Roberts, Jr., Attorney for Appellant.

Hon. Harmon C. Drew, Hon. R. M. Taliaferro, Hon. Joe B. Hamiter, Judges

[fol. 51] OPINION

By Taliaferro, J.:

The constitutional integrity of Act 64 of 1934 is squarely put at issue in this case. The act was upheld by the lower court and defendant has appealed.

Arthur C. Best and Sherman G. Spurr, on April 28, 1927, purchased from the Ackerman Oil Company by warranty deed several tracts of land in Caddo Parish, including that of 37.50 acres described in plaintiff's petition. This deed expresses a price of "one dollar and other good and valuable consideration" received by the grantor. It is executed on behalf of the corporation by Paul Mlodzik, President, and by Jerome C. Dretzka, Secretary. It is verified by the joint affidavit of these two officers who therein declare that they acted "by its (the Company's) authority". Several non-producing oil wells were on the tract on February 17, 1933, and the casing therefrom, owned by the plaintiff, was sold by Best and Spurr. However, on that date plaintiff procured their consent in writing to temporarily leave the casing in one of the wells to the end that he might make further tests to ascertain if profitable production could be had.

An informal written contract of lease to evidence the agreement was signed by them and placed on record. It is stipulated therein that plaintiff should receive seven-eighths of production, if any, and Best and Spurr one-eighth thereof. The effort was in a measure successful. Oil was produced. The output was sold to the defendant and piped by plaintiff into its carrier lines. The first run was made in September, [fol. 52] 1933, and the last in August, 1934. The net amount due therefor and for which plaintiff sues is $445.55. Payment of this amount was refused on demand. Judgment was rendered therefor. As is authorized by the 1934 act, an alternative writ of mandamus was sued out.

Defendant excepted to the petition on the ground that it did not disclose a cause or right of action, and by formal plea attacked the 1934 act as being unconstitutional, void and of no effect, in the following language:

"The said statute, if enforced in this cause, in the manner relied upon by relator, would require respondent to

pay to relator the value of property which did not belong and never has belonged to plaintiff, thereby leaving respondent responsible and liable to the true owner of said property for the value thereof, and in that manner depriving respondent of its property without due process of law, and denying to it the equal protection of the laws contrary to the provisions and requirements of the Constitutions of the United States and of the State of Louisiana."

The exception and plea were tried with the merits. Defendant denies that plaintiff has a valid lease of said land and denies that he ever has been the owner of the crude oil produced therefrom. It denies also that the deed to Best and Spurr is translative of property for two reasons, viz.; (1) that no serious consideration is therein expressed; and (2) that the officers of the Ackermann Oil Company who [fol. 53] signed said deed are not alleged either in the deed or the petition to have been authorized by the corporation to execute the deed. It also avers that in keeping with the uniform rule and practice of oil companies, its own counsel examined the abstract of title to said 37.50-acre tract and made criticism thereof and recommended that certain information be procured and curative work done in order to put said title in condition to be favorably passed, all of which were made known to plaintiff; and that none of these suggestions and recommendations were complied with and for this reason the price of the oil was withheld from plaintiff.

Subsequent to filing this suit, the Louisiana Oil Refining Company, availing itself of the benefits of Section 77-B of the United States Bankruptcy Act (U. S. Code, Title 11, § 207), for the purpose of reorganization, etc., surrendered all its property, assets and affairs to the United States District Court for the Western District of Louisiana and thereafter all of such property and assets were purchased and its liabilities assumed by the Arkansas Fuel Oil Company. This purchaser was substituted as defendant and the judgment herein rendered is against it.

Section 1 of Act 64 of 1934 declares, inter alia, that it shall be unlawful for any person, firm or corporation or officer thereof, when such person, firm or corporation has purchased oil, gas or other minerals from the lessee in a mineral lease holding under any instrument sufficient in terms to transfer title to the leased property or the mineral

[fol. 54] rights described therein, to withhold payment of the price of such purchase. Section 2 of the act, so far as is pertinent to the present discussion, reads:

"That any person, firm or corporation that has actually drilled or opened on any land in this State, *under a mineral lease granted by the last record owner,* as aforesaid, of such land or of the minerals therein or thereunder if the mineral rights in and to said land have been alienated, who holds under an instrument sufficient in terms to transfer the title to such real property, any well or mine producing oil, gas or other minerals shall be presumed to be holding under lease from the true owner of such land or mineral rights and the lessor, royalty owner, lessee or producer, or persons holding from them, shall be entitled to all oil, gas or other minerals so produced, or to the revenues or proceeds derived therefrom, unless and until a suit testing the title of the land or mineral rights embraced in said lease is filed in the district court of the parish wherein is located said real property. A duly recorded mineral lease *from such last record owner* shall be full and sufficient authority for any purchaser of oil, gas or other minerals produced by the well or mine aforesaid to make payment of the price of said products to any party in interest under said mineral lease, in the absence of the aforementioned suit to test title or of receipt, by such purchaser, of due notification by registered mail of its filing, and any payment so made shall fully protect the purchaser making the same; and so far as said purchaser is concerned as against all other parties, the producer of such oil, gas or other minerals shall be conclusively presumed to be the true and lawful owner thereof."

[fol. 55] Section 3 of this act is as follows:

"That notwithstanding the foregoing provisions, the purchaser, as respects any oil, gas or other minerals purchased prior to the date upon which this Act goes into effect, shall withhold payment of the purchase price until the lapse of sixty days from said effective date, or shall not be entitled to the protection said Act affords."

We had occasion to study and analyze this act in State ex rel. Boykin v. Hope Producing Company, 167 So. 506, and therein said:

"We experience little difficulty in determining the legislative intent in adopting this act. It supplied a long-felt need, and in its operative effect will serve to prevent imposition upon and unjust discrimination against those whom it was intended to protect. The act establishes a rule of conduct for the protection of lessors, and their assignees, under oil and gas leases, and also a rule of security and safety for lessees and those holding under or purchasing from them. The right to resort to mandamus to compel payment of rentals, royalties, or other sums due under the specific terms of the lease, is limited to demands which embrace an amount or amounts definitely fixed in the contract.

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The act was designed also to protect those persons whose rights arose from or are based upon contracts with the last record owner of the lands covered thereby, and to those who deal with or acquire from such persons. The last record owner is given the status of true owner, as relates to [fol. 56] all of said persons, and this status continues as to them until disturbed by filing of suit by an adverse claimant of the leased land or some real right concerning it. Under the act, royalty payments, definitely fixed in the lease, may not be legally withheld from those persons entitled to receive same, because of any defect in the title of the leased property or because of any threat or purpose on the part of third persons to involve the title or lease itself in litigation. Actual filing of suit by such third persons is necessary to stop the operative effect of the terms of the act."

Conditions precedent to a proper application of the protective provisions of this Act are these:

(a) That the lessee or other person from whom oil is purchased must trace his right to a lease or other contract with the last record owner holding title to the land or minerals sufficient in terms to transfer the re. In other words, a transfer or deed translative of property; and

(b) That said mineral lease or other contract from such last record owner be duly registered in the parish wherein is located the land thereby affected.

Concurrence of these two conditions warrants and protects the purchaser in paying the price to the one from

whom the oil has been purchased; and, under the express declarations of the act, no recourse may thereafter be had by any third person or adverse claimant against such buyer. [fol. 57] A title to be translative of property need not be executed by the true owner. Civil Code, Article 3485. It is only necessary to have such character that it be "a title which shall be legal and sufficient to transfer the property" if executed by the true owner, and sufficient to form the basis of the prescription of ten years. Civil Code, Articles 3479, 3484. It must be valid in point of form. The title deed to Best and Spurr meets all these requirements; but, it is argued, the absence of any written authority from the Ackerman Oil Company to its executive officers to execute the deed qualifies the act of sale to such extent that it is stripped of an indispensable attribute to its quality of being translative of property. It is not intimated that these officers were not clothed with authority to act for the company. Their good faith is not challenged. Over eight years had elapsed when this suit was filed and the company, the only person to complain, had not raised its voice in protest of its officers' action. Such an act of sale is presumed to have been executed by authority and, for the purposes of said act, is translative of property in point of form.

It has been frequently held that where one assumes the quality of agent and as such sells real estate, the deed executed by him, if otherwise valid, will serve as the basis of the prescription of ten years.

Bowers v. Laughton et al., 156 La. 188, 195, 100 So. 301.

[fol. 58] A long list of decisions supporting this principle is cited, among which is that of—

Greening v. Natalie Oil Company, 152 La. 467, 93 So. 682,

wherein the court on rehearing quoted with approval the following statement in Bedford v. Urquhart, 8 La. 241:

"A sale of immovable property, followed by tradition by a person styling himself the attorney in fact of the owner, but whose power of attorney is not produced, is only defective for want of the evidence of his authority, and not a nullity of form resulting from his legal incapacity."

We do not think there is merit in the contention that the deed is not translative of property because of the faulty expression of its consideration. It is presumed in a commutative contract that it is executed for a valid and adequate consideration, unless lack of such is negatived on its face.

Read v. Hewitt, 120 La. 288, 45 So. 143.

"An agreement is none the less valid, though the cause be not expressed."

Civil Code, Article 1894.

The true cause or consideration of a contract may be shown by oral testimony, even though the expressed consideration be thereby contradicted. This rule is fixed in our jurisprudence by scores of decisions.

Moore v. Pitre, 149 La. 910, 915, 90 So. 252.

[fol. 59] We shall first discuss the constitutional question presented as though the oil in question were all delivered to defendant after the effective date of the 1934 act.

It is not disputed that as a rule the true owner of the soil has a right of action against the purchaser of oil from one who first reduced it to possession. The right of the true owner to hold the purchaser or converter of the oil for its market value is a legal one, created and continued by lawful authority and, of course, may be modified, abridged or entirely abolished by the same or a co-equal power. Fugitive minerals, such as petroleum, belong to no one until reduced to possession. A lease to drill and explore therefor confers no real right. It has the status of a personal right.

Gulf Refining Company of Louisiana v. Glassell, et al., 186 La. 190, 171 So. 846.

When reduced to possession, oil becomes personal property and the sale thereof with incident rights may be regulated and controlled as to scope and effect as the Legislature deems proper, within constitutional limitations. Act 64 of 1934 does not seek to relieve the producer of oil from liability to the true owner of the soil. It does have the purpose of confining such true owner's recourse to the producer. Instead of having recourse against the producer and his purchaser, the true owner's recourse is restricted to the producer alone. We can perceive of no good reason why the Legislature is not vested with ample power to enact such a

[fol. 60] law for the promotion of just and fair dealings between its citizens. No vested right of the owner is destroyed, nor is he denied thereby the equal protection of the law. He still has recourse against the person who acquired possession of and sold his property.

A promissory note prescribes in five years from its maturity. It may not be collected if the maker resists its enforcement because barred by the statute of limitations. He still owes the note, but the law has taken from the holder the right to enforce collection judicially. It could not be successfully contended that such a law has deprived the holder of his property without due process of law. The same may be said of all prescriptions which bar actions unless instituted within a definite period.

The owner of stolen property may recover its value from one who in good faith purchased it from the thief and thereafter destroyed, consumed or disposed of it. We see no valid reason why the Legislature should not be within its proper power to enact a law that would protect the innocent purchaser from having to pay the owner the value of the stolen property and confine the recourse of such owner against the thief.

Real and personal property may be acquired by prescription as against the true owner, yet no one contends that laws recognizing this method of acquisition deprive the owner of [fol. 61] his property without due process of law or deny to him the equal protection of the law.

The right to inherit property, save as to forced heirs (Constitution, Section 16 of Article IV), depends upon the legislative will.

Hughes v. Murdock et al., 45 La. Ann. 935, 13 So. 182.

An act of the Legislature abridging, modifying or denying the right of inherison by heirs, other than forced ones, could not be successfully assailed on the ground that it deprived such heirs of property (an expectancy) without due process of law. Until such a right, as is the case with most rights, devolves upon the beneficiary, the power of the Legislature relative thereto is practically supreme.

The privilege of suing and of judicially compelling a debtor to repay what he is due to a complainant, even by the forced sale of his property, is conferred only by law. Without legal sanction such could not be done.

Article 1 of the Code of Practice defines an action to be,—"the right given to every person to claim judicially what is due or belongs to him." A personal action is defined by Article 3 of the Code of Practice to be,—

"* * * that by which a person proceeds against one who is personally bound towards him, *either by a contract or by virtue of the law*, in order to compel him to pay what he [fol. 62] owes to him or to perform what he had promised."

Applying this rule to the case at bar, it is clearly seen that defendant's fears of having to pay twice for the oil purchased from plaintiff are wholly groundless. No third person may claim such price by virtue of any contract with defendant, and the right of such person to sue defendant for the oil's value has been withdrawn by legislative enactment.

Act 64 of 1934 became effective on August 1, 1934. Nearly all of the oil involved herein was delivered to defendant prior to that date. It is contended by defendant that for the value of oil delivered prior to the going into effect of the act, a vested right and cause of action arose in favor of the true owner of such oil, if plaintiff were not such, and that such right and cause of action may not be divested or destroyed by legislative fiat. Unless the act by its own terms is saved from the force of this attack, defendant's position is well taken. A right of action to force indemnification for wrongs done to person or property is property within the meaning of the Constitution. The Legislature is destitute of power to annul or destroy it.

Angle v. Railway Company, 151 U. S. 1, 38 L. Ed. 55.

We think the act itself may be construed to adequately take care of the issue tendered by this contention. Section [fol. 63] 3 provides that as to oil purchased prior to the act's effective date, the purchaser "shall withhold payment of the purchase price until the lapse of sixty days from said effective date." If payment is made before the expiration of said effective date, then the purchaser is not protected by the act. While the act does not so declare, yet it is obvious that this sixty-day limitation was incorporated therein equally for the benefit of adverse claimants of the oil so sold and its purchaser. Claimants were allowed that period in which to assert their rights to the price against the purchaser and, in default of so doing within such time, they would thereafter have no standing in court to do so. This

character of limitation upon a claimant's right to sue has the sanction of law and has been uniformly recognized by the courts as a competent exercise of legislative power. The only limitation thereon is as to the reasonableness of the time allowed to the adverse claimant to invoke judicial aid in vindication of his asserted rights. Defendant does not here contend that the limitation in the 1934 act is unreasonably brief. Anent this principle, the Supreme Court in Atchafalaya Land Company v. F. B. Williams Cypress Company, 146 La. 1047, 84 So. 351, as reflected from the syllabus, held that,—

"The test of validity in a statute of limitations under the doctrine that a statute cannot, under the guise of merely changing the remedy for asserting a right or for enforcing an obligation, immediately take away the right or materially impair the means of enforcing the obligation, is whether it [fol. 64] allows a reasonable time for the assertion of the right or the enforcement of the obligation; the Legislature being primarily the judge of the reasonableness of the time allowed."

This case was carried to the United States Supreme Court and the judgment there affirmed (258 U. S. 190, 66 L. Ed. 559).

This holding of the court is abundantly supported by text books on constitutional law. Black and Watson are quoted from in the opinion. They say that the question of the reasonableness of the limitation is one that addresses itself to the judgment of the Legislature, and that the courts "will not determine it unless the error is a palpable one." In the present case, nearly twelve months elapsed after the effective date of the act before suit was filed. No third person to that time claimed the money in controversy and we may safely assume no such suit has been filed to this time. Touching this point, the court in the Atchafalaya Land Company case, said:

"If the time that had already run has anything to do with the question, why should we say that six years in which to sue on a cause of action that had already run 22 years was not a reasonable time?" (See also State ex rel. Richardson v. Recorder of Mortgages, 12 La. App. 62.)

Plaintiff has taken the position that since defendant recognized his ownership of the oil and agreed to pay him for

it originally, without qualification, it is now estopped to challenge such ownership and inequitably held both the [fol. 65] thing and its price, especially so when no adverse claim has been made to the oil in whole or part. There may be merit in the plea of estoppel, but it is unnecessary to definitely pass on the issue thereby raised in view of the decision reached by us on the more important questions submitted for adjudication.

Plaintiff sued for attorney's fees for services rendered in the case. These were disallowed by the lower court. We think this action correct. No law is known to us that warrants recovery of such a fee in a case of this character. Counsel fee was disallowed by the lower court in Sam P. D. Coyle v. North Central Texas Oil Company, Incorporated, and the judgment therein rendered as a whole was affirmed by the Supreme Court. The facts of that case are analogous with the present one. The case is not yet reported.

We are of the opinion that the lower court's judgment is correct. It is hereby affirmed, with costs.

[fol. 66] In Court of Appeal, Second Circuit, State of Louisiana

[Title omitted]

Application for Rehearing—Filed June 11, 1937

The petition of Arkansas Fuel Oil Company, substituted defendant and appellant in the above entitled and numbered cause, with respect represents:

1

That the opinion and decree rendered in this cause on the first day of June, 1937, are erroneous and contrary [fol. 67] to the law and evidence and prejudicial to the interest of petitioner, and that a rehearing should be granted in this cause for the following reasons, to-wit:

(a) The Court is in error in holding valid and constitutional Act 64 of 1934 of the State of Louisiana; for the reason that the Legislature has no power to withdraw from the true owner of minerals a cause of action against one who invades his ownership or assists a producer of such minerals in depriving the true owner of his property.

(b) The principle announced by the Court in holding the said Act valid, that one who assists in depriving the owner of minerals of his property can be freed of liability of such invasion of property rights, is not supported by any authority cited by the Court; and such holding is contrary to settled principles of constitutional law and to the principles announced by the Supreme Court of the United States.

Wherefore, petitioner prays that after due consideration of this application for rehearing and of the brief herewith field in its support, a rehearing be granted in this cause; and that finally the judgment of the District Court be avoided and reversed, and judgment rendered in favor of petitioner herein.

[fol. 68] For all orders and decrees necessary, and for general and equitable relief.

Blanchard, Goldstein, Walker & O'Quin, Robert Roberts, Jr., Attorneys for Arkansas Fuel Oil Company, Defendant-Appellant.

I hereby certify that the foregoing application is filed in good faith and not for delay, and that a copy hereof has been served on Mr. John B. Files, attorney for plaintiff-appellee.

Shreveport, Louisiana, June 11th, 1937.

Robert Roberts, Jr., Attorney.

[File endorsement omitted.]

[fol. 69] IN COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA

[Title omitted]

[fol. 70] ORDER DENYING REHEARING

Per CURIAM:

The rehearing applied for by the defendant, appellant, is refused.

Shreveport, La., June 30, 1937.

A true copy.

Albert E. Ewing, Clerk of the Court of Appeal, Second Circuit, State of Louisiana.

[fol. 71] IN SUPREME COURT OF LOUISIANA

No. 34525

STATE EX REL. HYMAN MUSLOW, Plaintiff-Appellee,

versus

ARKANSAS FUEL OIL COMPANY, Substituted for Louisiana Oil Refining Corporation, Defendant-Appellant

In re Arkansas Fuel Oil Company, Applying for Writ of Review to the Court of Appeal, Second Circuit, State of Louisiana

PETITION FOR WRIT OF CERTIORARI OR REVIEW

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of Arkansas Fuel Oil Company, substituted defendant and appellant in the cause entitled, State Ex Rel. Hyman Muslow v. Louisiana Oil Refining Corporation, Arkansas Fuel Oil Company substituted defendant, lately pending in the Court of Appeals, Second Circuit, State of Louisiana, on appeal from judgment of the First [fol. 72] Judicial District Court of Louisiana, within and for the Par-sh of Caddo, with respect represents:

1

That this is a suit in which petitioner's predecessor, Louisiana Oil Refining Corporation, was made defendant, the basis of the action being to recover the value of certain crude oil, admittedly produced by plaintiff, Hyman Muslow, and delivered to Louisiana Oil Refining Corporation as a pipe line purchaser, the land from which the oil was produced being situated in Caddo Parish.

The petition in the suit was framed to bring its allegations within the provisions of Act 64 of 1934, which requires persons engaged in the business of operating pipe lines and buying oil to pay to the producer of such oil the value thereof regardless of questions of title. As permitted by the Act, the proceeding was initiated by an alternative writ of mandamus; on the return day of the writ the defendant filed an exception of no cause nor right of action, a plea of unconstitutionality of the Act of 1934, and an answer to

the plaintiff's petition containing the unequivocal allegation that plaintiff and his lessors were not the owners of the oil or of the land from which it was produced.

The Judge of the District Court refused to allow defendant to prove that plaintiff was not the owner of the oil and that his lessors were not the owners of the land, overruled [fol. 73] the exception of no cause of action and for the reasons given in a written opinion, held constitutional and valid the Act of 1934; judgment accordingly was entered for the plaintiff for the value of the oil.

The Court of Appeal, as did the District Court, stated that the constitutional validity of the Act 64 of 1934 was squarely at issue; and for the reasons given in its written opinion, which were different from the reasons given by the District Judge, held the Act valid and affirmed the judgment of the District Court. The opinion and decree of the Court of Appeal were handed down and filed on June 1st, 1937. An application for rehearing was timely filed by defendant in the Court of Appeal, and such application was refused on June 30th, 1937, no written reasons being given for the refusal of the application.

Petitioner, as required by the rules of this Court, has given notice to plaintiff through his attorney and also to the Court of Appeal of its intention to apply to this Honorable Court for a writ of certiorari or review.

2

Insofar as it is relevant in the present case, Act 64 of 1934 requires purchasers of crude oil to pay the price of the oil to the producer, the operator of a lease, where this lease is obtained from one who has a deed to the property; in other words, requires payment for the oil regardless of the question of title of the land. The defendant earnestly [fol. 74] submits that these features of the statute are violative of the due process clause of the Federal and State constitutions, and deny to it equal protection of the law; it being clear, we submit, that the defendant is still responsible to the true owner of the land. The Court's attention is directed to the following considerations, more elaborately developed in the briefs filed in the Court of Appeal, and of which copies are herewith filed:

(a) Persons joining together to strip a man's land of its most valuable attribute, its mineral product, are invad-

ing his property rights in such manner that the Legislature is powerless to deprive him of an effective remedy for the wrong.

(b) The decisive part of the opinion to the contrary of the Court of Appeal is not supported by reference to any authorities, and is contrary to settled principles of constitutional law.

(c) The statute can not be considered as providing a valid procedure for fixing status, or adjudicating rights with respect to a res; since it fails to provide for process to known claimants and for due notice by publication or other substituted service to unknown owners. Defendant's original brief in the Court of Appeal points out fully the analogy to Torrens or title registration statutes, and cites the authorities which indicate the elements required to be included in such statutes to give them constitutional validity.

[fol. 75] (d) The analogy thought by the District Judge to exist between the statute under consideration and the statutes making ex parte judgments in succession proceedings prima facie proof is wholly fallacious, since the latter statutes refer to adjudications with respect to a res undeniably before the Court, and furthermore do not purport to make such decrees conclusive as does the statute here under attack.

3

The question of the validity of the Act of 1934 is one of public importance; pipeline companies and purchasers of oil generally have been advised, as defendant alleges on information and belief, that the statute as applied in the instant case is unconstitutional. Few, if any, of such purchasers rely on the Act; and public convenience, and the interest of the pipeline companies and oil purchasers and of smaller and independent producers of oil and other minerals, would be served by an adjudication by this Court upon the validity of the statute.

4

Petitioner attaches hereto and makes part of this application for writ of certiorari or review copies of the following documents:

Exhibit 1—Plaintiff's petition in the District Court.

Exhibit 2—Defendant's exception of no cause nor right of action.

[fol. 76] Exhibit 3—Defendant's plea of unconstitutionality of the Act of 1934.

Exhibit 4—Defendant's answer in the District Court.

Exhibit 5—Written opinion of the District Court.

Exhibit 6—Defendant's motion for rehearing in the District Court.

Exhibit 7—Motion to substitute party defendant.

Exhibit 8—Judgment of the District Court.

Exhibit 9—Opinion of the Court of Appeal.

Exhibit 10—Defendant's application in the Court of Appeal for rehearing.

Exhibit 11—Decree of the Court of Appeal denying rehearing.

Exhibit 12—Notice of intention to apply for writ of review.

Exhibit 13—Brief for plaintiff-appellee in the Court of Appeal.

Exhibit 14—Brief for plaintiff-appellee opposing application for rehearing in the Court of Appeal.

Exhibit 15—Brief for defendant-appellant in the Court of Appeal.

Exhibit 16—Brief for defendant-appellant on application for rehearing.

Wherefore, petitioner prays that a writ of certiorari issue herein directing the Honorable the Judges of the Court of Appeal for the Second Circuit of the State of Louisiana to send up to your Honors the record in this cause to the end that it may be examined by this Court and judgment entered herein; which judgment, your petitioner [fols. 77-78] prays, shall be a reversal of the judgments of both the District Court and the Court of Appeal and a dismissal of plaintiff's suit in accordance with the prayer of the answer of your petitioner herein in the Court of original jurisdiction.

Petitioner further prays for costs, for all orders and decrees necessary, and for general and equitable relief.

Blanchard, Goldstein, Walker & O'Quin, Robert Roberts, Jr., Attorneys for Arkansas Fuel Oil Company, Applicant.

Duly sworn to by Robert Roberts, Jr. Jurat omitted in printing.

[fol. 79] IN SUPREME COURT OF LOUISIANA, NEW ORLEANS, LA.

No. 34,525

STATE ex Rel. HYMAN MUSLOW

vs.

ARKANSAS FUEL OIL COMPANY, Substituted for Louisiana Oil Refining Corporation

ORDER DENYING WRIT OF CERTIORARI—November 2, 1937

By Mr. Justice ODOM:

In re Arkansas Fuel Oil Company, applying for Certiorari, or writ of review, to the Court of Appeal, Parish of Caddo, State of Louisiana

Writ refused. Judgt. correct.

A true copy.
Clerk's Office, New Orleans, November 2nd, 1937.
(Signed) Louis P. Niklaus, Dpy. Clerk, Supreme Court of Louisiana. (Seal.)

Filed November 3, 1937. Albert E. Ewing, Clerk of the Court of Appeal, Second Circuit State of Louisiana.

[fol. 80] IN COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA

[Title omitted]

PETITION FOR APPEAL FROM THE COURT OF APPEAL, SECOND CIRCUIT OF THE STATE OF LOUISIANA, TO THE SUPREME COURT OF THE UNITED STATES

To the Presiding Judge of the Court of Appeal, Second Circuit of the State of Louisiana:

The petition of Arkansas Fuel Oil Company respectfully shows:

1

Petitioner is the appellant in the above entitled and numbered cause.

2

Hyman Muslow, the above named appellee, filed his petition in the First Judicial District Court of Louisiana,

within and for the Parish of Caddo, on May 20, 1935, claiming $950.00, the value of certain oil alleged to have been delivered to Louisiana Oil Refining Corporation (for which corporation your present petitioner was substituted by order of the District Court, petitioner having succeeded, under decree of corporate reorganization under Section 77B of the amended Bankruptcy Act to the rights and obligations of Louisiana Oil Refining Corporation in regard to the subject matter of the suit); plaintiff relied upon the provisions of Act No. 64 of 1934 of Louisiana, which requires payment for oil by a pipeline purchaser regardless [fol. 81] of the fact that the producer may not have been the owner of the property or may not have had a lease from the true owner of the land. Defendant put at issue the title of plaintiff and of his lessor to the land from which the oil was produced and pleaded the unconstitutionality of the Act 64 of 1934. The District Court sustained the constitutional validity of the statute and on January 27, 1937 rendered judgment in favor of said appellee for the amount of $445.55, with interest at 5 per cent. per annum from September 30, 1934, until paid, which was the amount shown to have been the value of the oil received by Louisiana Oil Refining Corporation.

3

An appeal from said judgment to this court was prosecuted and by its decree herein of June 1, 1937, the judgment was affirmed; thereafter your petitioner applied for a rehearing which was denied on the 30th day of June, 1937. On July 27, 1937, your petitioner filed in the Supreme Court of Louisiana its petition for writ of certiorari or review, which was denied on November 2, 1937; as will appear from the certified copy of the said petition, and of the decree of the Supreme Court of Louisiana denying same, attached to and made part hereof.

4

In this cause there is drawn in question the validity of a statute of the State of Louisiana on the ground of its being repugnant to the constitution and laws of the United States, and the decision is in favor of its validity; in that plaintiff, upon the allegations of his petition in this cause and under the evidence adduced upon the trial of the case,

can not recover of defendant any sum unless the Act 64 of 1934 be held valid and applicable. Defendant in the Dis-
[fol. 82] trict Court specifically pleaded the invalidity and unconstitutionality of the said statute, which was alleged to be unconstitutional in that it denies to defendant the equal protection of the laws and deprives it of its property without due process of law.

5

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, which are more fully set out in the assignment of errors filed herewith. Petitioner also presents herewith its written statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree in question, all as provided by Rule 12 of the Rules of the Supreme Court of the United States, as amended.

Wherefore petitioner prays for the allowance of an appeal from said Court of Appeal, Second Circuit of the State of Louisiana to the Supreme Court of the United States in order that the decision of said Court of Appeal in this cause may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the clerk of this court, may be sent to the Supreme Court of the United States as provided by law.

Petitioner, desiring the appeal to be a supersedeas, prays an order touching the security to be required of it, and the approval of such bond as is required in this case.

Dated at Shreveport, Louisiana, January 5th, 1938.

Robert Roberts, Jr., Attorney for Petitioner, Proposed Appellant.

[fol. 83] In Court of Appeal, Second Circuit, State of Louisiana

[Title omitted]

Assignment of Errors

Arkansas Fuel Oil Company which has filed in this cause petition for appeal to the Supreme Court of the United

States, assigns the following errors in the record and proceedings in said case:

1

The Court of Appeal, Second Circuit, State of Louisiana, erred in this cause in its opinion and decree herein holding valid and constitutional Act No. 64 of 1934 of Louisiana, by reason of which holding and decree plaintiff recovered judgment in the cause against defendant which otherwise it could not have obtained. And which holding and decree were made notwithstanding defendant's contentions, made in the trial court by answer and plea of unconstitutionality and renewed in the Court of Appeal, that the said statute so applied would enable plaintiff to recover of defendant the value of certain crude oil delivered by plaintiff to defendant but which plaintiff did not own; and that the purported protection given by the statute to defendant from a claim by the true owner of the oil converted by the defendant was illusory and not real and that defendant, being thus left responsible to the true owner of the converted [fol. 84] oil for its value, would be deprived of its property without due process of law, contrary to the provisions of the Constitution of the United States.

2

The said Court of Appeal erred in its opinion and decree herein affirming the ruling of the District Court, made upon the trial of the cause, by which defendant, now appellant, was denied the right to introduce evidence to show that plaintiff was not and had never been owner of the oil to recover the value of which the suit was brought. Which ruling was made and affirmed on the sole authority of the provisions of the Act No. 64 of 1934 of Louisiana, above referred to, notwithstanding defendant's insistence that the statute, thus applied, would leave it responsible to the true owner of the oil in question and thereby deprive it of its property without due process of law, contrary to the provisions of the Constitution of the United States.

3

In said suit there was drawn in question, in the manner hereinabove pointed out, the validity of the statute known as Act 64 of 1934 of Louisiana, entitled—"To foster the de-

velopment of the natural resources of Louisiana by making it unlawful to withhold payment of any sum due lessor, royalty owner, lessee or producer under an oil, gas and mineral lease where the lessee or producer has developed real property under a lease from the last record owner of such property, or of the mineral rights in and to said property have been alienated as of the date of such lease and under whom said lessee or producer claims, holding under an instrument sufficient in terms to transfer title to such property or said mineral rights; to authorize the purchaser of oil, gas or other minerals produced from such property to pay the price therefor to any party in interest under said [fol. 85] mineral lease unless and until a suit testing the title to such property or said mineral rights is filed in the district court of the parish wherein said property is situated, with due notification of such filing given to such purchaser in interest, and releasing such purchaser from all responsibility in connection with all payments so made; to declare such producer, as concerns such purchaser against all other parties, conclusively presumed to be the true and lawful owner of all oil, gas or other minerals produced on said property; to provide that said purchaser shall not be entitled to the benefits of this Act unless recorded notice of said purchase first appears in the conveyance records of the parish where the land producing the purchased products is located; to limit the effects of this Act with respect to such oil, gas or other minerals purchased prior to its effective date; to provide a remedy to compel payment as aforesaid, or under any division order; and to repeal all laws, or parts of laws, in conflict with the provisions of this Act.'"—on the ground that it was repugnant to the Constitution of the United States and particularly the 14th Amendment to the Constitution, and the decision of the Court of Appeal was in favor of the validity of the statute, which decision is hereby assigned as error.

For which errors Arkansas Fuel Oil Company prays that the said judgment of the Court of Appeal, Second Circuit of the State of Louisiana, dated June 1, 1937, in the above entitled cause, be reversed and judgment rendered in favor of said Arkansas Fuel Oil Company.

Dated at Shreveport, Louisiana, January 5th, 1938.

Robert Roberts, Jr., Counsel for Appellant.

[fol. 86] In Court of Appeal, Second Circuit, State of Louisiana

[Title omitted]

Order Allowing Appeal

The petition of Arkansas Fuel Oil Company for appeal in the above cause, to the Supreme Court of the United States, from the Court of Appeal, Second Circuit of the State of Louisiana, and the assignment of errors and statement of jurisdiction filed therewith, and the record of said cause having been considered, it is

Ordered that an appeal be and is allowed to the Supreme Court of the United States from the Court of Appeal, Second Circuit of the State of Louisiana, as prayed in said petition, and that the clerk of this court shall prepare and certify a transcript of the record and proceedings in the above cause and transmit the same to the Supreme Court of the United States within 40 days from the date hereof.

It is Further Ordered that said Arkansas Fuel Oil Company shall give good and sufficient security in the sum of $1250.00, that said appellant shall prosecute said appeal to effect, and if said appellant fail to make his plea good, he shall answer all damages and costs.

The said appellant now presenting a bond in the sum of $1250.00 with Fidelity & Casualty Company of New York as surety, it is ordered that the same be and hereby is approved.

[fol. 87] The appeal shall operate as a supersedeas.

Signed in chambers at Shreveport, Louisiana, this 6th day of January, 1938.

H. C. Drew, Presiding Judge of the Court of Appeal, Second Circuit, State of Louisiana.

[fol. 88] Citation, in usual form, showing service on John B. Files, omitted in printing.

[fols. 89-92] Bond on appeal for 1,250.00 approved and filed Jan. 6, 1938 omitted in printing.

[fol. 93] IN COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD

To Albert E. Ewing, Esq., Clerk of the Court of Appeal, Second Circuit, State of Louisiana:

In compliance with Rule 10 of the Supreme Court of the United States, the appellant hereby indicates the portions of the record in the above cause to be incorporated into the transcript of record on this appeal to the Supreme Court of the United States from the decree of this court, as follows:

1. Plaintiff's petition in the District Court.
2. Defendant's plea of unconstitutionality of the Act 64 of 1934.
3. Defendant's answer in the District Court.
4. Evidence taken on the trial of the case in the District Court.
5. Written opinion of the District Court.
6. Order entered on the minutes by the District Court, January 18, 1937, substituting Arkansas Fuel Oil Company as defendant.
7. Judgment of the District Court.
8. Opinion of the Court of Appeal.
9. Defendant's application in the Court of Appeal for rehearing.
10. Decree of the Court of Appeal denying rehearing.
11. Application to the Supreme Court of Louisiana for writ of review.

[fol. 94] 12. Decree of the Supreme Court of Louisiana denying application for writ of review.

13. Defendant's petition for appeal to the Supreme Court of the United States.

14. Assignment of errors, on appeal to the Supreme Court of the United States.

15. Order of Court of Appeal allowing appeal to United States Supreme Court.

16. Citation of appeal and service thereon.

17. Bond for appeal to the Supreme Court of the United States.

18. Defendant's jurisdictional statement under Rule 12 of the United States Supreme Court.

19. Notice to Hyman Muslow under Rule 12 of the Supreme Court of the United States and service thereon.

20. This præcipe and service thereon.

Dated at Shreveport, Louisiana, January 6th, 1938.

Robert Roberts, Jr., Attorney for Arkansas Fuel Oil Company, Appellant.

Service of the foregoing is accepted this January 6th, 1938.

John B. Files, Attorney for Hyman Muslow, Appellee.

[fol. 5] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 96] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed February 7, 1938

Comes now Arkansas Fuel Oil Company, the appellant in the above entitled cause, and adopts its assignments of error as its statement of the points to be relied upon, and states that the whole of the record, as filed, is necessary for the consideration of the case.

Dated Shreveport, Louisiana, February 5th, 1938.

H. C. Walker, Jr., First National Bank Building, Shreveport, Louisiana, Counsel for Appellant.

[fol. 97] STATE OF LOUISIANA,
Parish of Caddo:

Before me, the undersigned Notary Public in and for Caddo Parish, Louisiana, appeared Mrs. Jarvis D. Moran, who being duly sworn, deposes and says:

That she is employed in the Legal Department of Arkansas Fuel Oil Company; that a copy of the foregoing has

been this day mailed, postage prepaid, to the attorney for Hyman Muslow, namely:

Mr. John B. Files, Commercial Bank Building, Shreveport, Louisiana.

Mrs. Jarvis D. Moran.

Sworn to and subscribed before me this 5th day of February, 1938. Mrs. Lena Mae Yates, Notary Public in and for Caddo Parish, Louisiana, (Seal.)

[fol. 98] [File endorsement omitted.]

Endorsed on cover: File No. 42,241. Louisiana Court of Appeal, Second Circuit. Term No. 760. Arkansas Fuel Oil Company, appellant, vs. State of Louisiana, ex rel. Hyman Muslow. Filed February 7, 1938. Term No. 760, O. T., 1937.